



**IN THE MATTER OF:**

**Respondent.**

**ALS No. 11093**

1. Complainant is an “aggrieved party” as defined under the Illinois Human Rights Act, 775 ILCS 5/1-101 et. seq., (Act).
2. Respondent is an “employer” as defined by section 2-101 (B)(1)(a) of the Act.
3. Complainant has failed to establish a prima facie case of race discrimination.

4. Respondent has submitted competent, admissible evidence to show that it terminated Complainant for legitimate, non-discriminatory reasons.
5. Complainant has failed make a showing that the employer's proffered reason for discharging him were pretextual.
6. Based on the record, there are no genuine issues of material fact to support this case proceeding to a hearing on the merits.

### **Determination**

Dismissal of the instant Complaint is warranted inasmuch as Complainant has failed to present sufficient evidence from which a reasonable factfinder might draw an inference of discriminatory intent based upon race.

### **Discussion**

In analyzing motions for summary decision, the Commission is required to scrutinize the pleadings, affidavits and exhibits presented to it and to strictly construe them against the party seeking the summary decision so as to leave no doubt but that summary decision is proper. Fourdyce v. Bay Fish Co., 111 Ill.App.3d 76, 443 N.E.2d 790,792, (3<sup>rd</sup> Dist. 1982). Also, Complainant is required to present some factual basis that would arguably entitle him to a judgment under the law. Schoondyke v. Heil, Heil, Smart & Golee, 89 Ill.App.3d 640, 411 N.E.2d 1168, (1<sup>st</sup> Dist.1980).

In order to establish a prima facie case of race discrimination, the Complainant needs to present facts establishing that 1) he is a member of a protected class; 2) he was performing his job duties in accordance with the employer's legitimate expectations; 3) he suffered an adverse employment action ; and 3) similarly situated co-workers not in the protected class were treated more favorably. Kyser and Health Care Serv. Corp., \_\_\_ Ill. HRC. Rep. \_\_\_, (Charge No. 1990 CF 1878, March 1, 1994); Yarbrough and Ryder, \_\_\_ Ill. HRC. Rep. \_\_\_, (Charge No. 1988 CF 2549, March 4, 1992); Adams and Pepperidge Farm, 42 Ill. HRC Rep. 239 (1988).

According to the undisputed facts as taken from the allegations in the Complaint and the Respondent's verified answer, Complainant, a black male, was hired in November 1995 and was working as a Web Press Helper at the relevant time. Around December 20, 1998, Respondent placed Complainant on probation for 30 days and subsequently discharged Complainant in January 1999. Respondent's proffered reason for placing Complainant on probation was for unsatisfactory job performance and Respondent's proffered reason for discharging Complainant was for unsatisfactory work performance following a thirty-day formal final warning period.

After this, the facts radically differ. Complainant alleges that he performed his assigned job duties in an acceptable manner consistent with Respondent's standards, and Respondent denies this allegation.

Complainant further alleges that a similarly situated, non-black, employee, Hubert Adams, had similar work performance as Complainant; however, he was not placed on 30 days probation nor discharged. Respondent denies that Adams' performance was "similar" to Complainant's.

Complainant contends that Respondent has failed to furnish documentation that Hubert Adams' performance was not similar to Complainant's. Respondent agrees that it has been unable to furnish performance reviews of Adams; however, it maintains that it has furnished other information related to Adams' performance.

In this prima facie analysis, (as numbers 1 and 3 are not at issue) initially the question is whether Complainant was performing his job duties successfully. On this issue, Respondent has submitted several affidavits and copies of Complainant's performance reviews supporting its contention that Complainant was not performing his job duties within the employer's legitimate expectations.

Respondent has submitted the Affidavit of Paul McGuire in which he avers that he was Complainant's supervisor from December 1997 until January 29, 1999, that Complainant received a performance rating that he failed to meet expectations in February 24, 1998; that he discussed the poor performance with Complainant; and that he provided additional training to Complainant by several different trainers in response to Complainant's contention that certain operators who were currently training him were not training him properly. After this first round of training, Complainant was assigned to another trainer, Kuxhause, for continued training. Kuxhause reported to McGuire that Complainant was not advancing appropriately in his knowledge of the job duties. In July 1998, McGuire personally observed Complainant and concluded that Complainant was not performing the necessary tasks.

Upon confronting Complainant, Complainant blamed his lack of performance on Kuxhause, whom Complainant said was not adequately training him. In response to Complainant's dissatisfaction with Kuxhause, McGuire assigned Complainant to yet another trainer – Barcal -- who reported to McGuire that he, too, lacked confidence in Complainant's work. Complainant received a second unfavorable performance appraisal in December 1998 and was placed on final warning. When Complainant still did not improve during the final warning probation period, he was discharged. McGuire avers that Complainant's errors cost Respondent several hours of production time and several hundred dollars due to Complainant's having burned up two dip rollers, and spoiled over 5, 000 impressions.

Complainant submits no counter affidavits or other evidence to contradict the averments in McGuire's affidavit as to his performance. In a motion for summary judgment, well-alleged facts within an affidavit must be taken as true when they are not contradicted by counter-affidavits. Conroy v. Andeck Resources '81 Year End Ltd., 137 Ill.App.3d 375, (1985), Kutner v. DeMassa, 96 Ill. App.3d 243, 421 N.E.2d 231, (1<sup>st</sup> Dist. 1981). Taking all reasonable inferences from Complainant's response to the summary judgment motion and from the pleadings, the only reasonable inference opposing McGuire's averments is

that Complainant appears to contend that he was not given adequate training. However, McGuire's affidavit indicates that Complainant was placed with at least three different groups of trainers to accommodate his concerns, and still showed little or no improvement. In viewing the affidavits, responses and pleadings in the light most favorable to Complainant, there remains a failure of Complainant to present any evidence whatsoever to demonstrate that he was performing his job duties to the employer's reasonable expectations; therefore, the next analysis has to be to determine if there is sufficient evidence that similarly-situated co-workers, not in the protected group, were treated more favorably. Complainant presents Hubert Adams, a non-black male, as his sole comparable, alleging that Adams' performance was similar to his; however, Adams was not put on probation or discharged.

McGuire's affidavit avers that Adams was significantly more competent and more reliable than Complainant, that he demonstrated a higher level of motivation, and that he met the employer's expectations of competence and job performance. Further, McGuire avers that Adams' appraisals indicated that he was "meeting expectations," unlike Complainant's performance appraisals, which indicated Complainant was "not meeting expectations."

Respondent also submits the affidavit of Ken Berg, Department Manager of Training, who worked with Complainant during 1998. Berg avers that Complainant lacked the skills and knowledge of a press helper and that Adams was a competent, good worker.

Respondent additionally submits the affidavits of co-workers Gregory Matz, and Mark Angeloni. Both aver that Complainant's work did not meet expectations and that Adams' work was competent.

Complainant's response does not address the averments in Respondent's affidavits. Complainant's response focuses on allegations of unnamed individuals tampering with his car, allegations that he received inferior training and allegations that co-workers and trainers would take long lunches and breaks. Complainant's presentation is void of any showing that Adams' performance was similar to his; therefore, Complainant's prima facie case showing fails.

Under these facts, Complainant's failure to make out a prima facie case is not necessarily fatal to his claim. Once the Respondent has articulated a legitimate, non-discriminatory reason for its actions, the issue becomes whether Respondent's articulated reason is pretextual. Clyde and Caterpillar, Inc. 52 Ill. HRC Rep. 8 (1989) aff'd sub nom Clyde v. Human Rights Comm'n, 206 Ill.App. 3d 283, 564 N.E.2d 265 (4<sup>th</sup> Dist. 1990).

On this issue, Respondent has submitted competent, admissible evidence that Complainant's job performance was unacceptable and that Complainant was put on probation and ultimately discharged after demonstrating sub-standard performance. Further, Respondent has put forth undisputed evidence that it took extreme steps to allow Complainant the time and resources he needed to prepare for the job duties and took action to accommodate Complainant by assigning him to different trainers when he

expressed dissatisfaction with the quality of one or the other. Respondent prepared and presented Complainant a performance review that warned him that he would be terminated if he did not improve. When Complainant did not improve, he was discharged. Complainant has presented no evidence to contradict this argument.

This matter is being considered pursuant to Respondent's Motion for Summary Decision. A summary decision is analogous to a summary judgment. Cano v. Village of Dolton, 250 Ill. App. 3d 130, 620 N.E.2d 1200 (1st Dist. 1993). A motion for summary decision should be granted where there is no genuine issue of material fact and the moving party is entitled to a recommended order in its favor as a matter of law. Strunin and Marshall Field & Co., 8 Ill. HRC Rep. 199 (1983).

Paragraph 8-106.1 of the Illinois Human Rights Act, 775 ILCS 5/101-1 et. seq., specifically provides that either party may move, with or without supporting affidavits, for a summary order in its favor. If the pleadings and affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a recommended order as a matter of law, the motion must be granted. The Commission has adopted the standards used by the Illinois courts in considering motions for summary judgment for motions for summary orders, and the Illinois Appellate Court has affirmed this analogy. Cano v. Village of Dolton, 250 Ill App. 3d 130, 620 N.E.2d 1200, 189 Ill. Dec. 833 (1st Dist. 1993).

Based upon the record, there are no genuine issues of material fact, as Respondent has submitted competent, admissible evidence that shows it placed Complainant on probation and later discharged Complainant for poor work performance and Complainant has submitted no competent, admissible evidence to contradict Respondent's evidence on this issue; nor has Complainant presented any evidence whatsoever that his identified comparable had a similar record and was treated more favorably. The record supports that Respondent is entitled to summary decision in its favor as a matter of law.

### **RECOMMENDATION**

Because the record supports that there are no genuine issues of material fact as to whether Complainant was performing his job duties in an acceptable manner, as to whether similarly situated co-workers were treated more favorably, or as to whether Respondent's proffered reasons for placing Complainant on probation and subsequently discharging him were pretextual, I make the following recommendations:

1. That summary decision in favor of the Respondent be granted.
2. That this matter be dismissed, with prejudice.

### **HUMAN RIGHTS COMMISSION**

By:\_\_\_\_\_

**SABRINA M. PATCH**  
**Administrative Law Judge**  
**Administrative Law Section**

**ENTERED: March 12, 2002**